1948. **File No.** O. Cr. PC/48

K

G **BRANCH**

Subject:— Opinion on the Criminal Procedure Code..

P.3/E

File No. O/Cr. P.C./48

Gen. 194 e.

G/13/48

C O N T E N T S .

Legal Department File No. O. / Cr. P.C. /48.

Sr. No.	R. I. / O. No.	Subject	Pages.
		Opinions on the Criminal Procedure Code.	
1).	378 / 12/1p1948.	Section 403. Whether the Umbrella Covers are 'cloth' or'apparel' under the Cotton Textiles (Control of Movement) Order Whether a fresh prosecution instituted against the accused Narsi Kallayan after issuing a fresh sanction ~~order~~ order on the same facts on which he is once tried and discharged, would be successful.	1-2.
2).	5327 / 4-6-1948.	Section 197. Whether the sanction of Govt. of India is necessary for the prosecution of Mr. Shethi who is a gazetted officer of the Central Govt. for breach of Bombay Rationing Regulations (~~view~~ ~~ink~~ not taken). copies	3-4. (Copies not made).
3).	G/688 / 2/12/48-	Section 516 A and 523 Whether inrespect of orders made under the Defence of India Rules which are still current, the procedure laid down in sections 516-A and 523 regarding custody and disposal of seized articles can be followed by the Police Officers and Magistrates	5-6.

V.V.K. 11/7/56/

.5C.

Office of the R.L.A.

The question raised for R.L.A.'s consideration are :-

1) Whether the umbrella covers are (cloth' or 'apparel' under the Cotton Textiles (Control of Movemht) Order;

2) Whether afresh prosecution instituted against the accused Narsi allyan, after issuing a fresh sanction order, on the same facts on which he is once tried and discharged, would be successful ,

Q.1. Attention of the C.S.D. is invited to the R.L.A.'s opinion No. 13307 datdd 23-12-47.

Question No 2. Section 403 Cr. P.C. bars the trial of a person for the same offence efor which he has been convicted or acquitted. An order of discharge cannot be a bar to the trial of the person discharged for the same offence of which he was discharged and it is now held by all the High Courts that a Magistrate is competent to rehaar a case when the accused is discharged (p. 770of Sohoni's Cr. P.C. 14th Edn.) Besides if the discharge was on the ground that sanction for the offence of transport of 'apparal(was bad, fresh prosecution can be launched after giving fresh sanction for the offence of transport of 'cloth' (see section 403(4) Cr . P.C.). However it will not be possible to say categori cally whether such a prosecution would be successful or not.. The question is one of interpretation for the court to decide.

Id/- P.M.L.
dt/- 9/1/

Remembrancer of Legal Affairs .

U.R. to C.S.D. No. 378 dated the 12th Jan. 1948.

V.V.K. 10/6/56/

- 5C.

Office of the R.L.A.

The question for consideration is whether in respect of orders made under the Defence of India Rules which are still current, the procedure laid down in Sections 516-A and 523 of the Criminal Procedure Code regarding custody and disposal of seized articles, which is being prescribed by the Civil Supplies Department in the Circular at pages 17-19 ante for general observance, can be followed by the Police Officers and Magistrates .

The ~~Criminal~~ Control Orders issued under the Defence of India Rules which are now current, are continued in force either under the Essential Supplies (Temporary Powers) Act, 1946 or the Bombay Essential Commodities and Cattle (Control) Act, 1946 and such orders are deemed to be orders made under the above said ~~xxx~~ two Acts as the case may be. Sub-rule 3(c) of Rule 81 of the Defence of India Rules is no longer in force and that procedure regarding custody and disposal of frozen or seized goods is no longer available and, therefore, the same procedure which applies to orders under these Acts will also become applicable in respect of orders under Defence of India Rules so presumed the orders issued under the Defence of India Rules are now deemed to be issued under one or the other of the above Acts, and in the absence of any special procedure prescribed in this behalf under these Acts-. the procedure prescribed in Sections 516-A and 523 of Criminal Procedure Code may be followed in all such cases .

Id/- P.M.L.
dt/- 1912/

Remembrancer of Legal Affairs.

V.V.K. 10/7/66/ 5C.

O.
U.R. to the C.S.D. No. 9691688, dated 2-12-48.